

### **Remarks**

This Response is provided in response to a non-final Office Action mailed June 23, 2004. The Office Action rejected claims 1-12 under 35 U.S.C. §102(e) as being anticipated by prior art.

The Applicant has added new independent claim 13, drafted under the provisions of 35 U.S.C. §122, paragraph 6. Support for new claim 13 is found by reference to FIGS. 6-9 and the description of FIGS. 6-9 beginning on line 24 of page 12 and continuing through line 23 of page 18.

The hereinabove new claim is believed to be proper, does not add any new matter, and serves to place the application in proper condition for reconsideration and allowance.

### **Rejection of Claims Under 35 U.S.C. §102(e)**

The Office Action rejected claims 1-12 under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,484,212 issued to Robert Edward Markowitz; Joseph Thomas O'Neil; Kenneth H. Rosen; and Peter H. Stuntebeck, November 19, 2002 (Markowitz '212).

The Applicant respectfully traverses the foregoing rejection and submits that the claimed invention as filed is, under 35 U.S.C. §102(e), patentable over Markowitz '212, because every element of the claimed invention is not identically shown in Markowitz '212. "For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference." See, *In re Bond*, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990), quoting *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

### **Claims 1-6**

Regarding claims 1-6, Markowitz '212 fails to show the second element of claim 1, i.e., "a data distributor, adapted to distribute data as streaming data at a first bitrate to at least one data server in the network, *while writing* said data to said data storage *at substantially said first bitrate*." Markowitz '212 shows "In this way, the gateway proxy device 115 may store, in a media storage device 116, all versions of the media information available from the media server 135. When subsequent first requests are received from user devices 100-

110, the gateway proxy device 115 may stream an appropriate version of the media information (i.e. encoded bandwidth equal to or less than the requesting user device connection) without any further interaction with the media server 135.” (See FIG. 1 and col. 3, lines 57-65 describing FIG. 1).

Markowitz '212 particularly fails to show the claim limitations of: writing the streaming data to data storage of the delivery network *while* the streaming data is being distributed to at least one server of the delivery network; and that the streaming data is being written to the data storage at substantially the same bitrate as the streaming data is being delivered to the server.

Because Markowitz '212 fails to identically show each element of the invention claimed by claim 1, the Examiner fails to provide a prima facie showing of anticipation under 35 U.S.C. §102(e) of claim 1. Accordingly, the Applicant requests withdrawal of the rejection of claim 1; the withdrawal of the rejections of claims 2-6 depending from claim 1; and passage of claims 1-6 to allowance.

#### **Claims 7-12**

Regarding claims 7-12, Markowitz '212 fails to show the second element of claim 7, i.e., “writing said data to a data storage at substantially said first bitrate while performing said distributing step.” In particular, Markowitz '212 fails to show the claim limitations of the second claim element of: writing the streaming data to a data storage of a delivery network at a bitrate substantially the same as the bitrate the streaming data is being distributed to the server of the delivery network; and to write the streaming data to the data storage while the streaming data is being distributed to the server of the delivery network.

Additionally, claims 7-12 reasonably represent method claims corresponding to system claims 1-6 and incorporate common limitations, therefore the hereinabove argument for the patentability of claims 1-6 applies in common to claims 7-12.

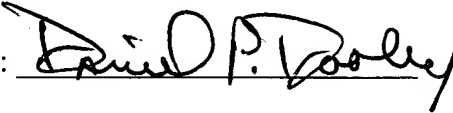
Because Markowitz '212 fails to identically show each element of the invention claimed by claim 7, a prima facie showing of anticipation under 35 U.S.C. §102(e) of claim 7 cannot be sustained. Accordingly, the Applicant requests withdrawal of the rejection of claims 7-12, and passage of claims 7-12 to allowance.

**Conclusion**

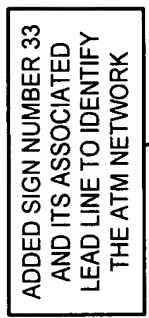
The Applicant respectfully requests reconsideration and allowance of all of the claims pending in the application. This Response is intended to be a complete response to the non-final Office Action mailed June 23, 2004.

Should any questions arise concerning this response, the Examiner is invited to contact the below listed Attorneys.

Respectfully submitted,

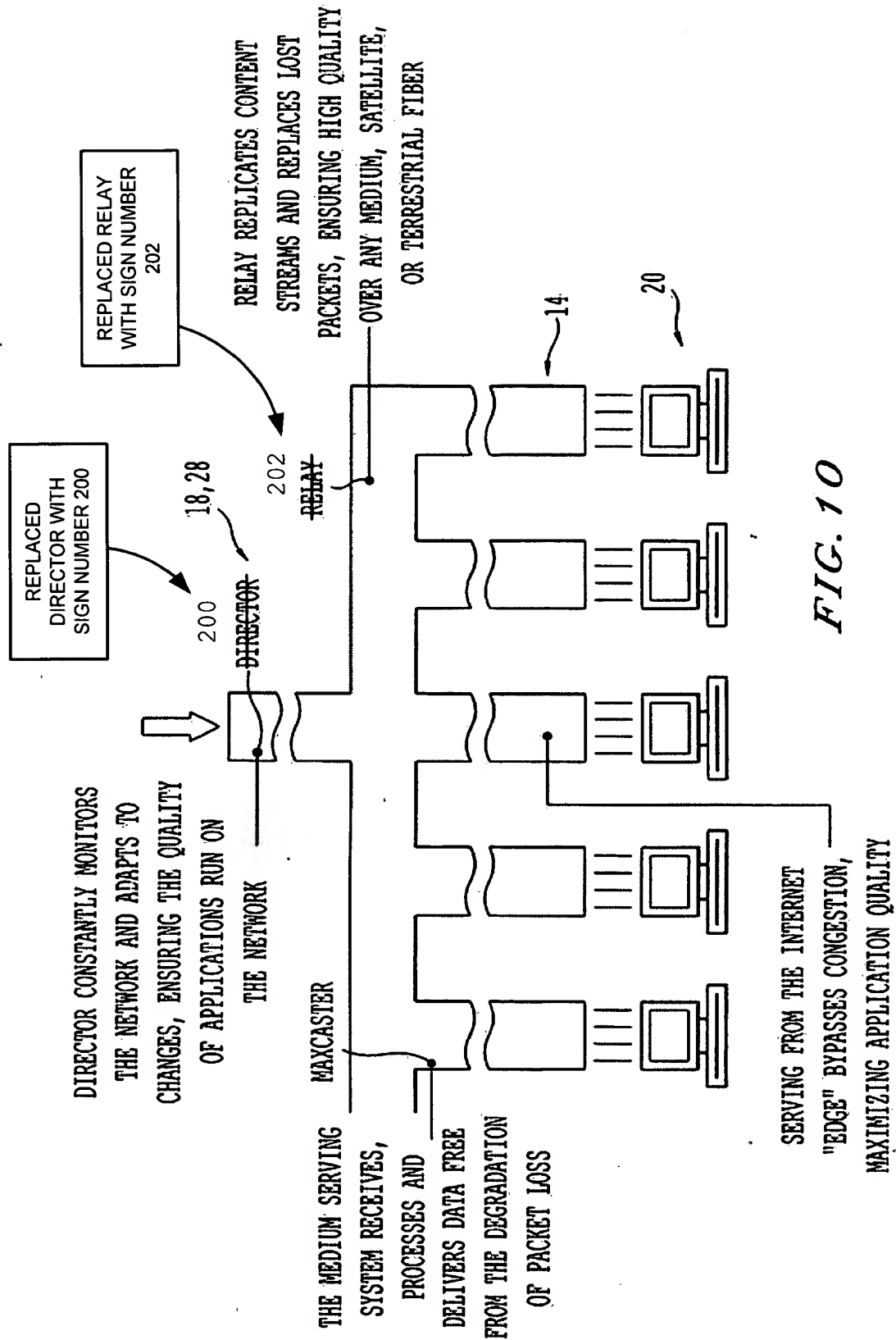
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**FIG. 1**

13/14





14/14

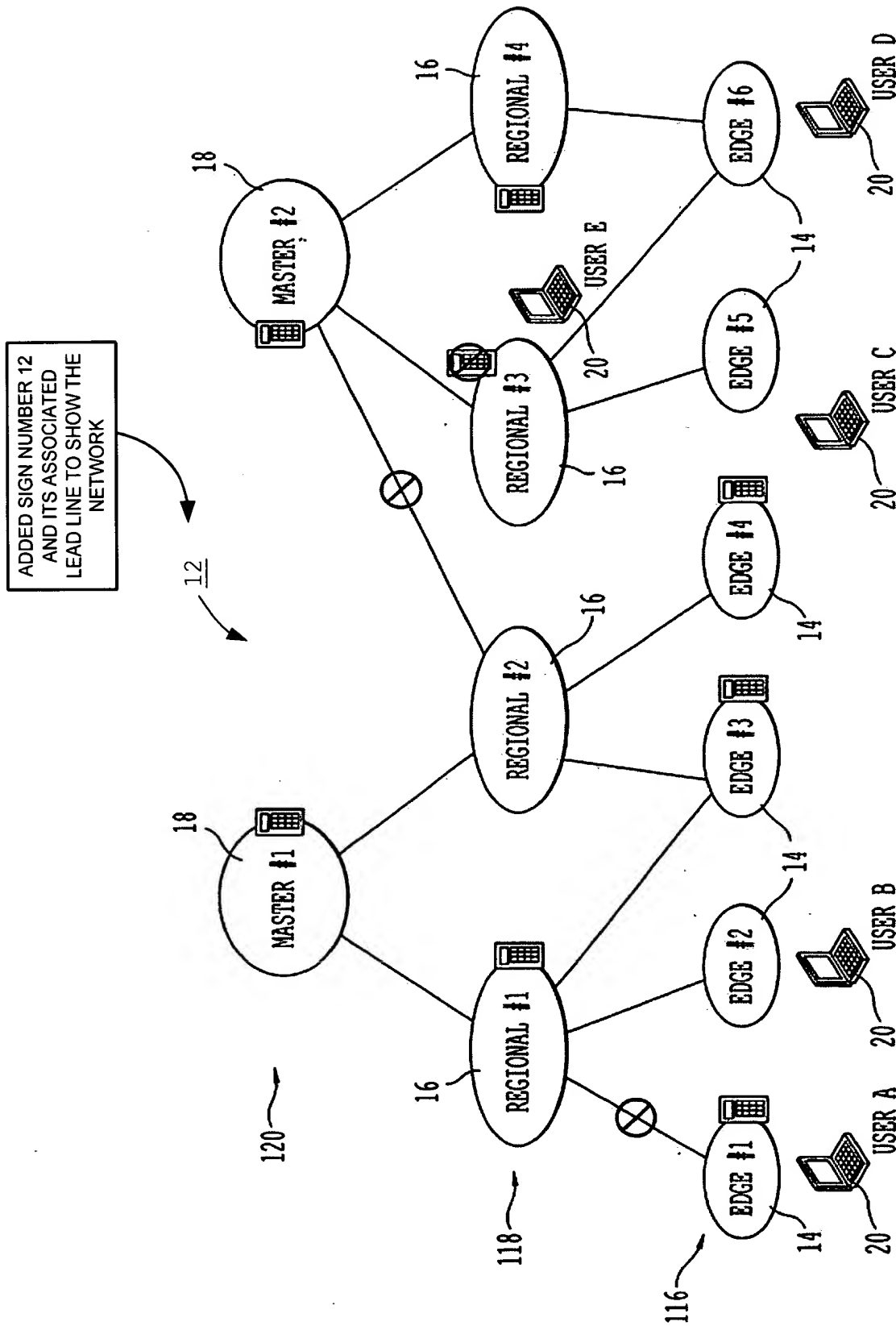


FIG. 11